

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-HQ-OAR-2007-0170; FRL -]

**Supplemental Proposed Rulemaking on 8-Hour Ozone
Redesignations for Various Areas in Michigan, Ohio and West
Virginia**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Proposed rule.

SUMMARY: On December 22, 2006, the U. S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour ozone standard. This supplemental proposed rulemaking sets forth EPA's views on the potential effect of the Court's ruling on a number of proposed redesignation actions. This rulemaking applies to eighteen 8-hour ozone nonattainment areas in Michigan, Ohio and West Virginia, for which EPA has proposed approval of the States' redesignation requests. For the reasons set forth in the notice, EPA proposes to find that the Court's ruling does not alter any requirements relevant to these proposed redesignations that would prevent EPA from finalizing these redesignations. The EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that may be

filed, imposes no impediment to moving forward with redesignation of these areas to attainment, because in either circumstance, redesignation is appropriate under the relevant redesignation provisions of the Clean Air Act (CAA) and EPA's longstanding policies regarding redesignation requests.

DATES: Comments must be received on or before **[INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2007-0170 by one of the following methods:

- www.regulations.gov: Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov.
- Fax: (202) 566-1741.
- Mail: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.
- Hand Delivery: Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2007-0170. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read

your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Butch Stackhouse,
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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to you if you are a State that has proposed areas for redesignation from nonattainment to attainment of the 8-hour ozone standard, but EPA has not yet finalized such actions. This action is applicable therefore to the following States: Michigan; Ohio, and West Virginia. This supplemental proposed rulemaking applies to eighteen 8-hour ozone nonattainment areas, sixteen of which were designated nonattainment for the 8-hour ozone standard and classified under Subpart 1 of Part D of the CAA, and which were previously designated Unclassifiable/Attainment, or Attainment subject to a CAA section 175A maintenance

plan under the 1-hour standard. EPA has published proposed rulemakings to redesignate these areas to attainment for the 8-hour ozone standard. The areas and dates of proposed rulemakings for these areas are: Parkersburg-Marietta, OH-WV (Washington County, OH), request submitted on November 17, 2006 and proposed on January 17, 2007, 72 FR 1956, previously Unclassifiable/Attainment for the 1-hour standard; Parkersburg-Marietta, OH-WV (Wood County, WV), request submitted on September 8, 2006 and proposed on January 12, 2007, 72 FR 1474, previously Attainment subject to a maintenance plan for the 1-hour standard; Steubenville-Weirton, OH-WV (Brooke and Hancock Counties, WV) request submitted on August 3, 2006 and proposed on October 2, 2006, 71 FR 57905, previously designated Unclassifiable/Attainment for the 1-hour standard; Wheeling, OH-WV (Marshall and Ohio counties, WV) request submitted on July 24, 2006 and proposed on October 2, 2006, 71 FR 57894, previously designated Unclassifiable/Attainment for the 1-hour standard; Flint (Genesee and Lapeer Counties), MI request submitted on June 13, 2006 and proposed on January 8, 2007, 72 FR 699, previously designated Attainment subject to a maintenance plan for the 1-hour standard (Genesee County) and

Unclassifiable/Attainment (Lapeer County) for the 1-hour standard; Benton Harbor (Berrien County), MI request submitted on June 13, 2006 and proposed on January 8, 2007, 72 FR 699, previously designated Unclassifiable/Attainment for the 1-hour standard; Benzie County, MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Grand Rapids, (Kent and Ottawa Counties), MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Attainment subject to a maintenance plan for the 1-hour standard; Huron County, MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Lansing-East Lansing (Clinton, Eaton, and Ingham counties), MI request submitted on May 9, 2006 and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Mason County, MI request submitted on May 9, 2006

and proposed on December 7, 2006, 70 FR 70915, previously designated Unclassifiable/Attainment for the 1-hour standard; Canton-Massillon (Stark County), OH request submitted on August 24, 2006 and proposed on December 27, 2006, 71 FR 77678, previously designated Attainment subject to a maintenance plan for the 1-hour standard; Lima (Allen County), OH request submitted on August 24, 2006 and proposed on December 27, 2006, 71 FR 77678, previously designated Unclassifiable/Attainment for the 1-hour standard; Wheeling, OH-WV (Belmont County, OH) request submitted on August 24, 2006 and proposed on December 27, 2006, 71 FR 77666, previously designated Unclassifiable/Attainment for the 1-hour standard; and Steubenville-Weirton, OH-WV (Jefferson County, OH) request submitted on October 3, 2006 and proposed on January 8, 2007, 72 FR 711, previously designated Attainment subject to a maintenance plan for the 1-hour standard.

This rulemaking also applies to two 8-hour nonattainment areas that were classified under Subpart 2 for the 8-hour ozone standard. These areas, Muskegon, (Muskegon county), MI and Cass County, MI, were also previously designated Attainment subject to a maintenance plan (Muskegon) and Unclassifiable/Attainment

(Cass County) for the 1-hour standard. The request was submitted on June 13, 2006 and proposed rulemakings for these areas on January 8, 2007, 72 FR 699.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

- Follow directions - The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and provide substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information

directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Roberto Morales, U.S. Environmental Protection Agency, OAQPS Document Control Officer, 109 TW Alexander Drive, Room C404-02, Research Triangle Park, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

C. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of this proposed rule is also available on the World Wide Web. Following signature by the EPA Acting Assistant Administrator for Air and Radiation, a copy of this proposed rule will be posted on the EPA=s <http://www.epa.gov/ozonedesignations/>.

D. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

I. General Information

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 - I. National Technology Transfer Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. What is the Background for This Action?

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). South Coast Air Quality Management Dist. v. E.P.A., ___ F.3d ___ (D.C. Cir. December 22, 2006). The Court held that certain provisions of EPA's

Phase 1 Rule were inconsistent with the requirements of the CAA. The Court rejected EPA's reasons for implementing the 8-hour ozone standard in nonattainment areas under subpart 1 in lieu of subpart 2 of Title I, part D of the CAA. The Court also held that EPA improperly failed to retain four measures required for 1-hour nonattainment areas in the anti-backsliding provisions of the regulations:

(1) nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification;

(2) Section 185 penalty fees for severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; (4) and the requirement to demonstrate that certain types of projects meet certain conformity requirements. The Court upheld EPA's authority to revoke the 1-hour standard provided there were adequate anti-backsliding provisions. The Court has established March 22, 2007, as the date by which any rehearing petitions must be filed.

III. What are EPA's Views on the Potential Effect of the Court's Ruling on the Proposed Redesignation Actions Identified in This Notice?

This notice sets forth EPA's views on the potential effect of the Court's ruling on the proposed redesignation actions that are the subject of this notice. For the reasons set forth below, EPA does not believe that the Court's ruling alters any requirements relevant to these proposed redesignations and does not prevent EPA from finalizing these redesignations. The EPA believes that the Court's decision, as it currently stands or as it may be modified based upon any petition for rehearing that may be filed, imposes no impediment to moving forward with redesignation of these areas to attainment, because in either circumstance, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

A. Areas Classified Under Subpart 1

1. Possible Subpart 2 Requirements

With respect to the 16 8-hour nonattainment areas EPA classified under Subpart 1 at the time of designation, EPA notes that the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard

and remanded that matter to the Agency. Consequently, it is possible that these areas could, during a remand to EPA, be reclassified under Subpart 2. Although any future decision by EPA to classify these areas under subpart 2 might trigger additional future requirements for such areas, EPA believes that this does not mean that redesignation of the areas that are the subject of this notice cannot now go forward. This belief is based upon: 1) EPA's longstanding policy of evaluating redesignation requests in accordance with only the requirements due at the time the request was submitted; (2) consideration of the inequity of applying retroactively any requirements that might be applied in the future and, (3) with respect to certain of the areas that are the subject of this notice, the fact that the redesignation requests preceded even the earliest possible due dates of any requirements for Subpart 2 areas.

First, at the time the redesignation requests for the 16 Subpart 1 areas that are the subject of this notice were submitted, the areas were classified under Subpart 1 and were obligated to meet the Subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, States requesting redesignation to attainment must meet only the relevant

State Implementation plan (SIP) requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992 Calcagni memorandum ("Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division); See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465-66 (March 7, 1995) (redesignation of Detroit-Ann Arbor). Sierra Club v EPA, 375 F.3d 537 (7th Cir. 2004). See, e.g., also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis). At the time the redesignation requests were submitted, the 16 areas were not classified under Subpart 2 and no Subpart 2 requirements were applicable for purposes of redesignation.

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted, but which might later become applicable. The D.C. Circuit has recognized the inequity in such retroactive rulemaking, See Sierra Club v. Whitman 285 F. 3d 63 (D.C. Cir. 2002), in which the D.C. Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would

have resulted in the imposition of additional requirements on the area. The Court stated: "Although EPA failed to make the nonattainment determination within the statutory timeframe, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id.* at 68. Similarly, here it would be unfair to penalize the areas included in this notice by applying to them for purposes of redesignation any additional SIP requirements under Subpart 2 that were not in effect at the time they submitted their redesignation requests, but that might apply in the future.

Third, even if a future Subpart 2 classification were applied to these areas retroactively, for many of the Subpart 1 areas subject to this notice, the Subpart 2 requirements would still not be considered applicable for purposes of redesignation. As set forth above, the applicable requirements for purposes of redesignation are only those that became due prior to submission of the redesignation request. In the case of eight of the areas

subject to this rulemaking¹, the submission of the redesignation request preceded even the earliest possible due date of requirements for areas classified under Subpart 2 effective June 2004. These requests were all submitted before the earliest such submission date, which was June 15, 2006, for the emissions statement requirement under section 182(a)(3)(B) and emissions inventories under section 182(a)(1). Thus for this additional reason alone these additional Subpart 2 requirements would not be applicable for purposes of evaluating redesignation requests for these areas. In addition, to the extent that areas had complied with the emissions statement requirement for the 1-hour standard under section 182(a)(3)(B), this could also be considered to satisfy the requirement under the 8-hour standard.

2. Requirements Under the 1-Hour Standard

With respect to the Court's ruling regarding EPA's revocation of the 1-hour standard, all of the Subpart 1 areas that are the subject of the pending redesignation actions were designated attainment or unclassifiable/attainment or attainment subject to a maintenance plan for

¹ Benzie County, MI, Grand Rapids, MI, Huron County, MI, Kalamazoo-Battle Creek, MI, Lansing-East Lansing, MI, Benton Harbor, MI, Mason County, MI, Flint, MI

the 1-hour standard. Those areas designated attainment or unclassifiable/attainment—were never designated nonattainment for the 1-hour standard. Thus, the provisions at issue in the antibacksliding portion of the Court's decision never applied to these areas and would not apply. For those areas designated attainment subject to a CAA section 175A maintenance plan for the 1-hour standard, the Court's ruling could be interpreted to require continuation of certain conformity requirements, such as the requirement to submit a transportation conformity SIP that addresses the 1-hour standard.² EPA approved conformity SIPs for those subpart 1 areas in Michigan and Ohio that were attainment subject to a maintenance plan for the 1-hour standard.³

Moreover, under longstanding EPA policy, EPA interprets the conformity SIP requirements as not being

² CAA section 176(c)(4)(E) currently requires States to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emissions budgets that are established in control strategy SIPs and maintenance plans.

³ Grand Rapids (MI), the Genesee County portion of Flint (MI), Canton-Massillon (OH), the Ohio portion of Steubenville-Weirton (OH) EPA approved Michigan's conformity SIP on December 18, 1996 (61 FR 66609), and Ohio's on May 30, 2000 (65 FR 34395).

applicable requirements for purposes of evaluating a redesignation request under section 107(d). See Wall v. EPA, 265 F.3d 426 (6th Cir. 2001), (upholding this interpretation). See also 60 FR 62748 (Dec. 7. 1995) (Tampa, FL redesignation). This is because state conformity rules are still required after redesignation and Federal conformity rules apply where State rules have not been approved. 40 CFR 93.151 and 40 CFR 51.390. Thus the decision in South Coast should not alter requirements for these areas that would preclude EPA from finalizing its proposed redesignations.

B. Areas Classified Under Subpart 2: Muskegon and Cass County, MI

1. Subpart 2 Requirements

The two 8-hour nonattainment areas listed above are classified under subpart 2 for the 8-hour standard. We do not believe that any part of the Court's opinion could require that these subpart 2 classifications be changed upon remand to EPA. However, even assuming that they may (and Muskegon and Cass County would be subject to a different classification under a classification scheme created in a future rule in response to the court's decision) that would not prevent EPA from finalizing the

proposed redesignation for these areas. For the same reasons set forth above with respect to the applicability of Subpart 2 requirements to areas that were classified Subpart 1 at the time of submission of redesignation requests, any additional requirements that might apply based on that different classification would not be applicable for purposes of evaluating their redesignation requests.

2. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard, since Cass County was never designated nonattainment for the 1-hour standard, there are no outstanding 1-hour nonattainment area requirements that it would be required to meet under the anti-backsliding requirements.

Muskegon was a maintenance area under the 1-hour standard; thus, the conformity requirement is the only relevant anti-backsliding requirement that was at issue before the court. As noted above, EPA approved Michigan's transportation conformity SIP on December 18, 1996 (61 FR 66609). Also, for the reasons set forth above with respect to the areas classified under Subpart 1, EPA believes that having an approved conformity SIP is not an applicable requirement for purposes of redesignation.

IV. What Action is EPA Proposing?

Thus, for the reasons discussed above, EPA proposes that the Court's ruling in South Coast, whether it stands as initially rendered or is modified based on any petition for rehearing or other further court proceeding, does not alter any requirements applicable for purposes of evaluating the redesignation requests for these areas that would prevent the Agency from finalizing its proposed determinations.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. It does not contain any recordkeeping or reporting requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply, with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency does not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a

substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic

impact of the rule on small entities.” 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule sets forth EPA’s views on the potential effect of the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management Dist. V. EPA*, ___ F.3d. ___ (D.C. Cir. December 22, 2006) on a number of areas proposed for redesignation of the 8-hour ozone standard.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with

"Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant

Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Since this proposed rule does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by State, local and Tribal governments or the private sector of \$100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. Thus, this proposed rule is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled AFederalism@ (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure Ameaningful and timely input

by State and local officials in the development of regulatory policies that have federalism implications.@ APolicies that have federalism implications@ is defined in the Executive Order to include regulations that have Asubstantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.@

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed action does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule for this action from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled AConsultation and Coordination with Indian Tribal Governments@ (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure Ameaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.@

This proposed rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. This action does not have any direct effects on Indian Tribes. Thus, Executive Order 13175 does not apply to this proposed rule. The EPA specifically solicits additional comment on this proposed rule from Tribal officials where there are applicable Tribal lands in the affected areas.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885,

April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this proposed rule present a disproportionate risk or safety risk to children. This proposed rule sets forth EPA's views regarding the potential effect of a recent Court's ruling, vacating the Phase 1 Ozone Implementation rule, on previously proposed redesignation actions. Furthermore, at the time those actions were proposed in the Federal Register, it was determined that Executive Order 13045 did not apply to those actions.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 ("NTTAA"), Public Law No. 104-113, section 12(d), (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical

standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of health or environmental protection, but instead merely sets forth EPA's views on the potential effect of the ruling of the U.S. Court of Appeals for the District of Columbia Circuit in *South Coast Air Quality Management Dist. v. EPA*, __ F.3d

**Page 33 of 33 - Supplemental Proposed Rulemaking on 8-Hour
Ozone Redesignations for Various Areas in Michigan, Ohio
and West Virginia**

___ (D.C. Cir. December 22, 2006) on a number of areas
proposed for redesignation of the 8-hour ozone standard.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control,
Nitrogen oxides, Ozone, Reporting and recordkeeping
requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas

Authority: 42 U.S.C. 7401 *et seq.*

Date

William L. Wehrum,
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